

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAMONT WEBB,	:	CIVIL ACTION
Petitioner,	:	
	:	NO. 05-2360
v.	:	
	:	
SHANNON, et al.,	:	
Respondent.	:	

MEMORANDUM

BUCKWALTER, S.J.

November 28, 2005

The Petitioner has filed objections to Magistrate Judge Carol Sandra Moore Wells' Report and Recommendation. The objections are premised on his claim of factual exculpatory evidence that he contends would show his innocence, and thus, it would follow, a miscarriage of justice.

He does not object to Judge Wells' conclusion that his petition was not timely filed and he is ineligible for equitable tolling. Those conclusions are not in dispute.

His claim of miscarriage of justice is based on his contention that certain time cards of his and attendance records of the accusers will clearly show that he was in work and not in accusers' company. Also, Petitioner submitted affidavits of others, some of which claim the accusers are known to be untruthful.

This is not the type of evidence that meets the demanding standard set forth in Calderon v. Thompson, 118 S.Ct. 1489, 1502, 1503. First and foremost, this evidence is not

new; it was available before sentencing as Petitioner states in his objections. The time bar which Judge Wells found extends to any claims made with regard to Petitioner's claim of innocence.

An order follows.

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ORDER

AND NOW, this 28th day of November, 2005, upon consideration of the Petition for Writ of Habeas Corpus and the Government's Answer, inclusive of all exhibits thereto, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, and the objections of Petitioner thereto, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The Petition for Writ of Habeas Corpus is DENIED without an evidentiary hearing; and
3. Petitioner has presented meritless claims and/or failed to meet the procedural requirements to have a petition reviewed. Furthermore, he has shown neither a denial of a constitutional right, nor established that reasonable jurists would disagree with this court's procedural ruling. Consequently, a certificate of appealability is DENIED.

IT IS SO ORDERED.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.